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May 25, 2018

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Via Hand Delivery

Ms. Kathryn J. Olson
Chair
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

**Re: Rutgers Park Dialysis (Proj. No. 17-014)
Response to State Board Report**

Dear Ms. Olson:

Polsinelli represents DaVita Inc. and Perryton Dialysis, LLC (collectively, the “Applicants”). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board’s (“State Board”) findings on the Rutgers Park Dialysis application for permit to establish a 12 station dialysis clinic to be located at 8455 Woodward Avenue, Woodridge, Illinois (the “Proposed Clinic”). Pursuant to Section 6(c-5) of the Illinois Health Facilities Planning Act (the “Planning Act”), the Applicants submit the following in support of the State Board’s findings.

1. State Board Findings

By way of background, the application for the Proposed Clinic was first considered at the September 26, 2017 State Board meeting. Upon initial consideration, the Proposed Clinic received two negative findings in its State Board Report: i) planning area need based upon an excess of 2 stations in the relevant planning area, HSA 7, and ii) unnecessary duplication of services due to underutilization of existing facilities within the 30 minute geographic service area (“GSA”) and a ratio of stations to population greater than 1.5 times the State average. At the meeting, the Proposed Clinic fell just one vote short of approval.

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a. Planning Area Need

Importantly, at that same September 2017 meeting, the State Board approved the new inventory of dialysis services, which identified a need for 51 stations in HSA 7.^{1,2} The Applicants propose a 12 station dialysis clinic in Woodridge, which is conformance with the projected need as reflected in the April 18, 2018 Update to Inventory of Other Health Services. Accordingly, the State Board accurately made a positive finding on this review criterion.

b. Unnecessary Duplication of Services, Maldistribution of Services, Impact on Other Providers

This criterion consists of three sub-criteria.

i. Unnecessary Duplication of Services

This element of the rule analyzes existing clinics within the GSA to determine whether capacity exists to accommodate the demand identified in the application for permit. Despite the fact capacity exists among the clinics in the GSA, the State Board made a positive finding due to the need for 49 stations coupled with the projected growth of 5% per annum from 2015 to 2020. This is the same analysis the State Board utilized in making positive findings for the Fresenius Kidney Care New Lenox and Hickory Creek Dialysis applications for permit in the April 2018 State Board Reports. The Applicants concur with this rule interpretation as it reduces conflicts between a finding that there is a need for services in the planning area and an “Unnecessary Duplication of Services” finding that is based on a static figure rather than on a growth trend. As was the case with the projects referenced above, the Applicants agree with the positive finding on this sub-criterion.

ii. Ratio of Population to Stations

This element of the rules analyzes the ratio of stations to population within the GSA and the State to determine whether a maldistribution of stations exists with the GSA. Based upon subsequent review, the Applicants discovered the application omitted 9 zip codes within the GSA, which accounted for 12% of the population. Relying on this data that underrepresented the

¹ Illinois Health Facilities and Services Review Board, Inventory of Health Care Facilities and Services Need Determinations 2017 Other Health Services A-16 (Sep. 27, 2017) available at <https://www2.illinois.gov/sites/hfsrb/InventoriesData/HealthCareFacilities/Documents/Other%20Services%20Inventory%202017.pdf>

² Subsequent to approval of the new need calculations, the State Board approved the addition of two dialysis stations to Schaumburg Renal Center, which reduced the need to the current 49 stations.

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population, the State Board staff determined a maldistribution of stations existed within the GSA in the September 2017 State Board Report.

The Applicants modified the application to correct this error pursuant to Section 1130.650(b) of the State Board rules.³ The State Board verified the revised population data and recalculated the ratio of stations to population for both the GSA and State. The two factors that were important in making the positive finding were i) the inclusion of nine zip codes previously omitted increased the GSA population, which in turn increased the ratio of population to stations and ii) that fact that between September 2017 and June 2018, 160 dialysis stations were added statewide whereas only 8 stations were added within the GSA. As a result of the new data, the GSA ratio of population to stations was 1.32 times the State Ratio and a positive finding was made.

Regardless of whether the new population was factored into the ratio of population to stations calculation, the State Board would have made a positive finding on this criterion due to the fact a larger percentage of stations were added Statewide than in the GSA from September 2017 to April 2018. While both the GSA and State ratio of population to stations fell during this period, the GSA ratio fell by 1.2% whereas the State ratio fell by 3.5%. As a result, the GSA ratio is 1.48 times of the State ratio. Accordingly, the State Board's positive finding on this review criterion was appropriate.

Ratio of Stations to Population				
	Population	Stations	Stations to Population	Standard Met
Rutgers Park GSA	1,291,630	700	1:1,845	Yes
Illinois	12,978,800	4,745	1:2,735	

2. Opposition Comments

On April 6, 2018, Fresenius Kidney Care submitted a letter to the State Board intending to block this project. Previously, Fresenius and its dialysis partner, NANI, populated the record with statements through testimony and in written comments. Despite the opponents' claims to the contrary and consistent with due process rights of an applicant to participate in the hearing process on at least an equal footing with a non-applicant, State Board Rules permit an applicant to provide additional information on a project pending before the State Board.

³ 77 Ill. Admin. Code § 1130.650(b)

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Section 1130.630(b), provides an opportunity to comment on projects pending before the State Board. All written comments must be received at least 20 days prior to consideration of an application for permit to allow the State Board staff time to transmit those comments to the members of the State Board prior to the scheduled State Board meeting. The purpose of the Section 1130.670 rules is to allow the State Board to docket projects and is not intended to preclude submission of additional information. It would be a perverse reading of the rules to imply an applicant can only submit additional information within 60 days of notice of an intent-to-deny, when opponents may submit material unverified/unsworn information just prior to consideration of an application.

The State Board rules further permit an applicant to submit additional information regarding a project either pursuant to a request from the State Board Staff, in response to an intent to deny, or as a modification of the project.⁴ Further, the State Board's rules do not preclude an applicant from responding to comments on an application provided such comments are received during the prescribed written comment period. The Applicants' April 30, 2018 submission did not violate the State Board's rules. It was a modification of the application to correct an error, a response to a request from the State Board for additional information, and a response to opposition comments. The April 30, 2018 submission was provided to the State Board well in advance of the deadline for written comment to allow members of the public ample opportunity to respond to the information submitted. This additional information was properly submitted, and we appreciate its consideration by the State Board.

3. Community Support

The Applicants appreciate the enthusiastic support for the Proposed Clinic from area health providers, social service organizations, elected officials, residents and patients. The State Board Report noted that the Proposed Clinic received support from State Senator John Curran, State Senator Tom Cullerton, RML Hospital, Access DuPage, Burgess Square, Wyncscape, Woodridge Horizon, Easterseals, People's Resource Center, West Suburban Community Pantry, Little Friends, and SpeedPro Imaging, six physicians, and two patients. This under-reflects the documented support for this project, however, as an additional ten letters were submitted in support of the Proposed Clinic in advance of the submission deadline.

We respectfully request that the State Board review and consider additional individual letters of support provided by the following community stakeholders:

⁴ 77 Ill. Admin. Code § 1130.635(a)(2)



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- U.S. Senator Richard Durbin
- Edward-Elmhurst Health
- Alden Estates of Naperville
- VNA Health Care
- Chamber 630
- Brian Smith
- Zigfield Troy Golf Range
- Mazen Diab, M.D.
- Shivani Shah, M.D.
- Howard Costello

Thank you for your consideration of the Applicants' response to the State Board's findings for the Rutgers Park Dialysis application for permit.

Sincerely,

A handwritten signature in blue ink that reads 'Anne M. Cooper'.

Anne M. Cooper

cc: Gaurav Bhattacharyya